LABOR LAW IN HONDURAS:

LEGAL, POLITICAL and PRACTICAL OBSTACLES TO ITS ENFORCEMENT

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I. INTRODUCTION[1]

Honduras is located in Central America, bordered by Guatemala, El Salvador and Nicaragua. The executive branch is represented by Ricardo Maduro, of the Nationalist Party, who became president in November 2001. The country has a population of 6.5 million. Approximately 33 percent of the labor force works in agriculture, followed by 24 percent in commerce, and 15 percent in manufacturing. The economy of Honduras is based primarily on agriculture and, increasingly, on the maquiladora industry. The principal exports are coffee and bananas, along with products from the maquiladora industry. About two-thirds of the country's households live in poverty, and 40 percent of the population lives on less than $1.00 per day.

Before the economic downturn of the early 80s, unions were very active in Honduras. Unions had negotiated more than 260 contracts, and work stoppages and strikes averaged about 85 per year. By 1989, however, strikes dropped in half. Growing repression was a factor in this downward trend, starting with the elimination of a major teachers union in the mid 1980s and attacks against the CNTC, an organization of Honduran farm workers.

In response to privatization of several state enterprises and the introduction of economic policies that raised inflation by 60 percent, several major unions formed the "Platform for Struggle to Democratize Honduras." Together, these unions agitated for wages increases tied to inflation, an end to the mass dismissals in the public sector, the end of state intervention in internal union affairs, land reform, the release of political prisoners, an increase in spending on health and education, labor code reform and respect for labor rights. These demands were met not by dialogue but by harsh anti-union violence.

The military, acting at the direction of the Health Ministry assassinated Brulio Canales Lopez, the president of SITRAMEDHYS (Sindicato de Trabajadores de Medecina, Hygenica u\y Similares) and Manuel Garcia, an activist with that union. After a soldier testified that officials paid assassins to kill Mr. Lopez, the union demanded an investigation and was in turn accused of defamation. The army thereafter occupied the public hospitals and administrators fired two members of the union's national executive board. The Health Ministry even went so far as to introduce legislation labeling the union activity as "acts of terrorism."

Workers at a Honduran brewery met a similar fate for their union activism. Three hundred members of the STIBYS (Sindicato de Trabajadores de Bebidas y Similares) went out on a one-day sympathy

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[1] See generally, Frundt, Henry, TRADE CONDITIONS AND LABOR RIGHTS, U.S. INITIATIVES, DOMINICAN AND CENTRAL AMERICAN RESPONSES (1998), p. 193-206.

strike with workers of the electrical workers union, who were protesting hikes in electricity rates. The STIBYS leader, Liliana Esperanza Lopes, was tortured. Intimidation also continued against SITRATERCO, the union representing workers on Chiquita's plantations. When the union went on strike in 1989, Chiquita filed a lawsuit demanding dissolution of the union, a three-year suspension of the executive board, and a $1 million indemnity. Fifteen union activists were immediately fired, provoking another strike. After 42 days, the military intervened and destroyed union property and wounded two. Indeed, in 1990 alone, the government assassinated 5 union leaders and illegally detained over 350 others, frequently using torture during interrogation.

During this time, maquilas became a much more prominent feature of the Honduran economic development plan. In 1990, Honduras was the only country in the region that had registered collective bargaining agreements in the maquila sector. In order to attract investment, the Labor Ministry assured maquila owners that if they located in the EPZs, the labor code would not be strictly enforced and that unionists would not be an issue. Indeed, workers faced many obstacles to union formation. Corrupt labor inspectors, who are supposed to notify a company that a union wished to form, gave the names of the workers to the plant manager before formal notification, allowing the company to fire them without cause. In other cases, the inspector pretended to be turned away at the gates by security in an effort to serve the official notification; when the papers were intentionally left at the gate, the company would fire the workers on the list with impunity because they had not been properly served.
Tensions came to a head in 1993 when four workers were fired for union organizing in the Continental Industrial Park in 1993. Five thousand workers occupied the park and closed down eight factories. Five days later, workers shut down five plants at the Galaxy Industrial Park. In June, after the firing of six pregnant workers in Puerto Cortez Park, 6,000 workers from six companies took to the highway and demanded reinstatement. When activists were fired in Choloma Industrial Park, 5,000 more workers walked out.

In response to these waves of labor activity and the subsequent repression, labor groups in the united States filed GSP petitions with the USTR on behalf of the workers. The first, filed in 1991 by the New York Labor Committee, was met with incredulity by the Honduran government and was rejected by the USTR. In 1995, the AFL-CIO, in conjunction with local labor organizations, filed for a review of Honduran labor policies, citing the government's failure to enforce laws regarding wage and hour laws (among others), protect workers against company reprisals, enforce the obligation to bargain collectively and enforce agreements, and prevent company interference in worker organizations.

In November 1995, as USTR delegation, including representatives from UNITE and AIFLD, went to Honduras to investigate. Following several discussions with union, employer and government representatives, the Honduran government agreed to an 11-point agreement as a means to stave off the possible withdrawal of beneficiary status under the GSP.

SUMMARY OF THE MEMORANDUM OF UNDERSTANDING

1. Fine, to the fill extent allowable by law, companies/parks that prohibit access by labor inspectors the first time this occurs. If companies prohibit the access, assess the maximum fine of 10,000 lempiras; if parks, assess fine of 10,000 lempiras per plant in the park.

2. The second time access is denied, the inspector should be accompanied by police to gain entry.

3. Increase frequency of unannounced inspections in maquila and non-maquila operations.

4. Complete proceedings to dismiss corrupt inspectors (who have already been identified but whose dismissal has not been completed because of the lack of resources to pay severance).

5. Through administrative action, enforce "fuero sindical" law to reinstate workers who are dismissed illegally within 24 hours (using "executive" judicial review).

6. Through administrative action, establish procedures whereby the list of union founders is submitted directly to the General Office of the Inspector General of the Ministry of Labor (bypassing the local inspectors) and is delivered to the plant owner/operator in a sealed envelope, to be opened by the plant owner in the presence of union representatives.

7. Expedite registration procedures of organizations so that undue delays do not allow time for the firing of workers who are trying to form the association.

8. On a longer term, work with labor and management to obtain their concurrence to develop a set of changes to the labor code that would: 1) require a 50 percent plus one majority of workers to gain the right to bargain collectively; and 2) strengthen protections for workers

9. Develop, with the Ministry of the Economy, a system to suspend export licenses for up to two weeks for companies that are multiple violators of labor law and engage in 1) physical abuse of workers; 2) non-compliance with labor laws relating to working conditions, such as hours of work, use of underage workers, occupational safety and health, etc.; or 3) the right to organize and bargain collectively.

10. Seek additional budgetary resources to improve training of labor inspectors and increase their salary, in order to reduce the likelihood of accepting bribes.

11. Explore the possibility of raising additional resources for training and compensation of inspectors for maquiladoras through special assessments on maquiladora operations (user fee), by the earmarking of fines collected through inspections, or other means.

The government of Honduras has failed to fully live up to its agreement to better enforce the labor laws of Honduras. Indeed, as the U.S. government has recognized, "A 1995 Memorandum of Understanding (MOU) between the Ministry of Labor and the Office of the United States Trade Representative calling for greater enforcement of the Labor Code has resulted in some progress. However, labor unions charge that the Ministry of Labor has not made sufficient progress toward enforcing the code, especially in training its labor inspectors and in conducting inspections of the maquiladora industry. The Government has acknowledged that it does not yet adhere completely to international labor standards." *See*, U.S. State Department Human Rights Report – Honduras (2003). This report will detail how the government fails to enforce its labor laws.

II. HONDURAN ECONOMIC AND LABOR INDICATORS AT A GLANCE

Honduras has a population of approximately 6,340,009 persons, of which 3,098,959 are men and 3,241.059 are women, with an annual growth rate of 3%. Forty-six percent of the population is located in urban areas, concentrated in the two most important cities: Tegucigalpa, the capital, with close to a million inhabitants and San Pedro Sula, located in the north-west of the country, with over half a million.

The Economically Active Population is: 2,437.997 (53%), of which:

Men..... 1,467.968 (71.6%)
Women..... 870.029 (36.3%)

The per capita income of the Honduran home is 1,211 lempiras.

The total work force is 2,334,596 of whom:

Salaried.....1,062,890
Not salaried.....1,271,706
The total number of unemployed is 103,401

In the context of Latin America, Honduras is one of the most underdeveloped countries: In 2002, Honduras was 116 of a total of 173 countries in the area of development. The Purchasing Power Parity index, which is just US $2,453 per person ($7,234 is average for Latin America), demonstrates how low the average income is in the country.

Honduras is ranked number 36 out of 88 countries in the Human Poverty Index, below Costa Rica and El Salvador. Also, Honduras ranks lower than the Central American and Latin American averages in the Human Development Index, where it is 0.638, even lower than it was in 2000 (0.651). This shows that the country, rather than growing and developing, is regressing. The outlook is thus grave for Honduras; 64.4% of the population lives in poverty. Life expectancy is 65.7 years, which is considerably lower than it is in Costa Rica (76.4 years) and Panama (74 years).

In the last two decades, Honduras suffered from the same crisis that hit the rest of Central America. During the 1980s, the country was used by the rearguard for the armed conflicts in El Salvador and Nicaragua. It was also used for North American military bases, and received thousands of refugees from bordering countries. Known as the "country where there was no war", it served as a mobilization

place for various regional forces, which had major social and environmental effects. The displaced persons and refugees, as well as the increase in organized violence, the growing external interference in national issues, the state's application of a national security doctrine, and the increasing poverty were all factors that worsened the structural crisis and led to deterioration in the quality of life for Hondurans.

In the 1990s, peace accords and democratization processes in the region coincided with the application of neo-liberal economic measures. The structural adjustment measures included the privatization of state services, increased taxes, increases in interest rates which reduced small and medium-sized companies' access to credit, the annihilation of agrarian reform through the application of the Law of Agricultural Modernization, and reductions in public spending.

Different studies concur that the structural adjustment measures made the poor even poorer while making the rich richer. Problems of exclusion, inequality, and social and economic injustice all worsened. The women were most affected: 78% of all women are poor.

In general, the structural adjustment measures implied political transformations on the level of the State: liberalization of the internal market and international trade, the elimination of subsidies, changes in the exchange rate (devaluation), increases in interest rates, the privatization of public companies, and special laws and zoning to attract foreign investment.

Currently, only about 14 percent of the work force is unionized, with public sector unions having greater strength than their counterparts in the private sector. In 2003, there were 51 active unions and 15 inactive in the maquila sector according to the Department of Social Organizations, although only 16 collective agreements were in effect during that period. However, a number of private companies have instituted "solidarity" associations, essentially aimed at providing credit and other services to workers and managers who are members of the associations. Organized labor criticize these associations because they do not permit strikes; have inadequate grievance procedures; are meant to displace genuine, independent trade unions; and are employer-dominated. Because of the restriction of one representative per workplace, a union cannot compete with a solidarity association if the association is the first to be established.

III. TRANSFORMATION OF LABOR RELATIONS IN HONDURAS & CENTRAL AMERICA

Central America has undergone a gradual economic transformation since the beginning of the 1980s. In this new economic order, the location of each country in the international context is determined by the placement of its products on the world market. To comply with the requirements that accompanied this change, a process of structural adjustment began, the central objective of which was a series of reforms in the country's productive structure to permanently link the national economy to the global economy. This of course implied changes regarding labor relations.

There have been a series of measures intended to implement structural adjustment that have had clear repercussions on labor law and workers' lives. Among these measures are the promotion of exports through free trade zones and export contracts, the promotion of internal savings, new rules regarding imports, and the reduction of the internal market. With regard to labor relations, many of these

measures implicated an increase in new forms of non-traditional wage structures. Mixed wages (both hourly and performance based), adjustments in labor benefits, new demands on quality and productivity, as well as the greater use of definite term employment contracts (terms and for work) are clearly tied to changes in the labor market.

Many of the requirements for labor can be satisfied using legislation that already exists. In other cases, however, there must be legislative reforms. The difficulty is how to adapt labor law from the 1940s (as a product of the state's social concerns, with traditional protections for labor rights) to the new conditions of the labor market and the ideas about the new role of the state and the economy.

A. Labor law and the New Economic Model

Both the approval of labor-related constitutional principles and the development of these principles in labor legislation are related to the economic model that was developed at the time. This social model implies a certain role for the state in society. During the period when the first labor codes were approved in Central America (1943- 1959), the social model included a state with deep social concerns, and one of the signs of this was the heavy regulation of the working world. The labor legislation that was developed in this period was characterized by marked state intervention in labor relations.

The intervention of the state in labor relations (both individual and collective) had the aim of achieving this protection, this restriction prevailing over the free will and freedom to contract applicable in other legal relations. State oversight of pacts and contracts, both individual and collective, is another example of this characteristic. There are other important aspects, such as the external control over working conditions through special offices or ministries (through inspection mechanisms headed by administrative labor authorities and a system for imposing sanctions on violations of labor law). This has led, over the last few decades, to the development of a basic set of labor rights.

a) State control in collective labor conflicts

Labor conflicts and their control are fairly uniform in all countries in the region. There is a state system of resolving conflicts. Here, the conciliation, mediation and arbitration, as mechanisms for resolving collective labor conflicts, are not just found in the realm of state activity (whether it is in the administrative branch or judicial branch), but the State also controls the content, validity, and enforcement of the instruments generated through these mechanisms.

b) Collective bargaining regulated by the state

There is rigid state control over the content of collective bargaining, which applies to all autonomous mechanisms for resolving conflicts. Even in cases where the union participates in the collective agreement, the labor law does not only establish the basic thematic content they must consider, but also the materials that they cannot regulate. The State also reserves the right to approve and register the results of the collective negotiation.

c) Partial recognition of the right to strike

If and when the strike is recognized as a fundamental right of the workers, its exercise is generally tied to the failure of state mechanisms created for the solution of conflicts, restricting determined activities, and with a context of strict conditions/requirements set expressly by law.

d) Regulations that restrict union activity

While there is a formal recognition of freedom of association, this is accompanied by a series of state control mechanisms on union activity, both in terms of their formation and registration and in terms of their functioning (prohibitions and rights).

B. Flexibilization Of Labor Laws

A new current in modern labor relations has proposed a process of transformation to the labor legislation, oriented towards flexibilization that permit the elimination or attenuation of norms that protect workers. The process of modifying the minimum standards also are accompanied by a tendency, in reality, toward the use of "flexibilities" already contained in the law, and a growing failure to comply with those norms that are considered "rigid". The increased use of illegal child and immigrant labor, the proliferation of illegal contracts, the failure to pay minimum wage, and the state's failure to monitor and control working conditions are a good demonstration of the current reality.

a) Collective Rights of Work and the Trend Toward Flexibilization.

This flexibilization process is most directed toward individual employment relations, as demonstrated by recent legislative reforms, like the case of Panama (1995) and some smaller but still important reforms in Guatemala (1961) and El Salvador (1963 and 1972), and Costa Rica (1982). In collective labor law, in general terms, the process has been contrary to the tendencies of flexibilization. The flexibilization tendency has been slowed in most countries as a result of some important legislative reforms intended to strengthen freedom of association and some collective rights.

There have been reforms to collective labor law in four countries in the area: Guatemala (Decree of Congress No. 64-92), Costa Rica (Law No. 7360 of 12-11-93), El Salvador (Decree Law No. 859 of 21-04-94) and Nicaragua (Law No. 185 of 30-10-96). All of these reforms were meant to establish legislative guarantees for freedom of association and some issues of collective labor law. Three of these (Guatemala, Costa Rica and El Salvador) are tied to the issue of international trade, and were generated by the actions of international unions because of GSP benefits. The only country that has not yet reformed its legislation on collective rights is Honduras.

b) Regional Proposals to Flexibilize Collective Rights

Today there are proposals and concrete actions to restrict some collective rights, particularly that of collective bargaining. On the one hand there is a movement to limit the content of agreements because of the requirements of economic globalization and the productive apparatus's transformation. At the same time the restrictions on collective bargaining by public employees are maintained or consolidated. On a theoretical level, flexibilization and adjustments are meant as a reconsideration of aspects of collective law. Schematically, the proposals to obtain flexibility are oriented to the following:

- A gradual removal of state intervention in collective labor conflicts, especially in terms of solution processes (arbitration, mediation, conciliation), instead turning to the establishment of private actors.

- A collective bargaining characterized by being restricted to the company level. This restriction refers to the elimination of collective negotiation in levels superior to the company, excluding for example negotiation with union organizations at the industrial level.

- In bargaining, priority is given to satisfying the requirements of the international economy in terms of productivity and competitiveness. Therefore they propose the self-regulation of new payment methods (bonuses, salaries based on output, etc) and new ways of organizing work (total quality, just in time, etc.), and ways of contracting personnel (fixed term, temporary, by job).

- In terms of freedom of association, in addition to expressly recognizing the exercise of this freedom and the guarantees (fuero, sanction procedures), they propose a break from the traditional principle of union representation of working class interests, replaced by representation as a function of the number of affiliates (critical number) now accompanied by a new freedom of affiliation that allows workers to choose non-union forms of organization (cooperatives, associations, *solidarismo*).

IV. FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

A. LAWS IN EFFECT IN HONDURAS

1. FREEDOM OF ASSOCIATION

According to Article 475 of the Labor Code, a minimum of 30 workers is required to form a union. Additionally, unions must be comprised of 90% Honduran workers. The legal formalities for registering a union, as set forth in Articles 480-490 are:

- The president of the temporary executive committee must send the registration application to the Ministry of Labor, enclosing all certificates required by law
- The General Labor Office will review the documentation and if it is incomplete will inform the organization. Once this phase is complete, it will submit a report to the Ministry of Labor which will determine if legal recognition is awarded or not. The General Labor Office must complete processing within 15 days.
- Once legal recognition is granted, the Ministry orders the registration of the union in a special registry.

Article 517 of the Labor Code sets forth the employer notification procedures for forming a union. Under the law, the employer is barred from retaliating against any worker forming the union while the application is in process. However, as explained below, employers fire workers organizing a union claiming that they never received a written notification of their intent. Administrative and judicial authorities are reluctant to act in such circumstances because there is no evidence that the employer was duly informed.

2. COLLECTIVE BARGAINING

1. Collective Bargaining in Brief:

Article 54 of the Labor Code requires an employer to negotiate with any two or more workers who belong to a union. The law permits only one enterprise union among a firm's workers. Accordingly, there may be only one collective contract in each enterprise. See Article 53. Not only trade unions, but groups of workers associated temporarily for the purpose of collective bargaining can also negotiate collective agreements with management. Id.

According to Article 495, a union's general assembly must approve the union's lists of demands by a simple majority of the union's total membership. The list of demands, along with materials concerning a number of technical requirements, is submitted to the labor inspectorate, which is to notify the employer of the demand to negotiate and set a date by which it must respond to the list of demands and begin negotiations. Among the certifications which must accompany the union's list of demands are:

1. A certification of the union's general assembly meeting at which demands were approved
2. A certification of the document naming the union negotiators
3. An application for the naming of a labor inspector to present demands to the employer

The labor code gives certain unions the right to strike to get a collective agreement if the employer refuses to bargain. However, before striking in such a situation, the union must exhaust all three stages of direct arrangements, mediation and conciliation. The labor courts do not get involved in collective conflict of a social-economic nature, such as a refusal to bargain. The Labor Ministry is responsible for resolving all such conflicts. See art. 797.2

Practice Note:

> After the Labor Inspectorate has delivered the notification of a union's request to open negotiations, often management will simply not respond or refuses to allow the labor inspector to enter the premises – thus making it impossible to deliver the notification. The union must then request the labor inspector to declare the stage of "direct negotiations" over, and name a mediator. However, in obtaining such a declaration requires a statement by the union and employer, which can be hard to come by.
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> The union must then pressure the labor inspectorate to declare the direct negotiations over and name a mediator. Once the mediator is named, the employer often appeals the decision to name the mediator. Consideration of his appeal by the ministry involves the union attending hearings in the capital city. If the ministry rules in favor of the union, the employer can appeal to the Supreme Court, which rules after 3-5 months, but sometimes after two years. Often, the employer refuses to meet with the mediator, in which case the ministry initiates conciliation. If the employer still refuses to negotiate, which may add another year or two to the process, the ministry can authorize a legal strike. Given the length of legal procedures, unions are often faced with the option of pursuing an illegal strike, which put all of the striking workers at risk of termination.

Once a collective agreement is registered with the General Labor Directorate, they are charged with ensuring compliance and can impose sanctions on employers who have been found to violate the agreement. See Articles 83 & 84. The employer can appeal the penalty to the Labor Ministry, which processes the appeal in accordance with administrative procedures. Although the Labor Code permits a union to strike to gain an employer's compliance with an agreement, Article 551, the union must first exhaust the three stages of dispute resolution mentioned above. Therefore, unions have little recourse when employers violate the agreement.

2. Immunity from Termination for Union Leaders (fuero sindical)

The Labor Code provides that the founding members of the union (30 workers) and the members of the executive board cannot be dismissed, transferred, or having their working conditions reduced without just cause a determined by the labor authorities. The founding members enjoy this protection from the date the employer receives the required notice until the union is legally recognized. For members of the executive board, the period of coverage extends throughout their term to six months afterwards.

3. Right to Strike

According to Article 550 of the Labor Code, strikes must be non-violent, pursue economic or professional objectives, and can be undertaken only after going through dispute resolution. Article 551 states that strikes may pursue the objectives of achieving a balance between labor and capital and compelling the employer to enter into a collective agreement, comply with an existing agreement, or negotiate a new agreement when an existing one has expired.

The right to strike for certain categories of workers, namely those in the public sector, is restricted by Article 555. For example, the following workers simply may not strike:

- Workers in hospitals, clinics, charities and social assistance organizations
- Workers in production and distribution of basic, necessary food
- Workers in sewer systems, electrical power, communications, unless the workers provide enough personnel to ensure that the suspension of these services will not cause grave and immediate damage to the public health, security or economy.

The procedures for declaring a strike are set out in Article 553 of the Labor Code:

- the strike must be limited to one or more of the objectives set forth in Article 551
- the procedures of negotiation, mediation and conciliation must have been exhausted
- at least 2/3 of the workers in the enterprise must declare themselves in favor of the strike
- all other pertinent requirements established in the labor code must be complied with

Articles 562, 563, 565, and 567 set forth a number of procedural requirements.

Under Article 570, the Labor Ministry may declare a strike illegal by administrate decision. Once a strike has been declared illegal, the employer is free to fire the workers who participated in the strike, and the ministry will suspend for 2-6 months the legal capacity of the union. Under Article 571, the

Labor Ministry official who declared the strike illegal may also, at his or her discretion, dissolve the union. A strike ends, under Article 572, by direct agreement between the employer and the workers, by arbitral award or by an agreement by the conciliation and arbitration commission.

4. The Free Trade Zones

The Export Processing Industrial Zones Law, found in Decree 133 of 1989, defines the zones and their labor relations in Article 23:

"All activities performed inside the processing industrial zone will be considered as public services. Companies operating in the zone will grant their workers all the benefits established by the labor legislation in force. Any labor conflict shall be solved according to the procedures established in the labor code referring to public services, to avoid interrupting the company's production, which may interfere with its export commitments."

Thus, workers in the free trade zones do not have the right to strike.

5. *Understanding Collective Bargaining Agreements In Honduras - Two Basic Agreements*

In Central America, there are at least 2 instruments of this kind that are important, and that are regulated in the labor codes: First there is the collective instrument created by the participation and exclusive title of the union organization, which we call the Collective Work Convention; second the instrument that the workers' representatives have when they are not acting as union representatives, which is generally called Direct Arreglo.

a. The collective bargaining agreement

" Convention Colectiva de Trabajo" means the instrument through which one or various workers' unions make an agreement with an employer or various employers or employers' organizations regarding the working conditions in one or various workplaces and which should be incorporated in current and future contracts. It has the following characteristics:

- The bearer of rights is the union

In practice, all Central American laws respect this principle, because in all of them the unions are said to be the exclusive bearer of the instrument we are referring to. The exception to this rule is in the Honduran Labor Code, where the workers can be represented in a collective contract by one or various workers' organizations like "the representatives of the workers of one or more companies or groups of workers temporarily associated" (Art. 53). In this case, there are 2 instruments with one legislative denomination; on the one hand there is the instrument that involves the participation of a permanent organization of workers, and then there is also the instrument where a temporary coalition can be involved. The legislation treats them equally.

- The instrument determines the general working conditions, but this does not mean that the parties to the collective relationship (workers' and employers' unions) can't establish rules of conduct or obligations.

First, in most Central American legislation, it is established that these are applicable to all workers, and that it is prohibited to limit the agreement to unionized workers. The exception is in the so-called union exclusion clauses in Honduran legislation (Art 61) where it is permitted to allow only union affiliates to be employed in the company, but which also says that the collective bargaining agreement can establish "privileges for unionists" although in this case the application of the norm can not hurt those who are non-unionized but who were already working in the company when the agreement was made.

Labor law guarantees that the collective agreement only modifies individual contracts to the extent that these are not more favorable than the collective agreement. This is intended to protect workers, to avoid that a collective bargaining process ends up worsening labor conditions. It comes from the perception that this instrument can only improve working conditions, which is linked to the idea from labor law that no instrument (neither collective nor individual) can lower the minimum conditions established by law—a principle that obviously also applies to the collective bargaining agreement, This rule specifically says that the collective agreement cannot have worse conditions for workers than the existing contracts (Art. 60)

- The principle is the general regulation of working conditions, but the parties are obligated to respect a set of formal regulations established by the State.

While the State respects non-interference principles and collective autonomy, and does not impose a specific content for the collective agreement, it does indicate the issues that should be addressed and some basic formalities. The legislative indications generally require the identification of the parties, the number of copies of the agreement, the definition of the area it can be applied in, the professional categories that are involved, the date and the period in which it will be effective.

b. The "arreglo directo"

The arreglo directo is another formal collective instrument, used to determine working conditions, in which a worker representative rather than the union organization is the holder of rights. In this case, the worker representative is generally nominated specifically for this task. This type of collective bargaining instrument is also considered in the international conventions, and that we can find an important (though indirect) reference in the text of Convention 135 from 1971 (regarding the protection and facilities to be afforded to workers' representatives) and Recommendation 143.

In Honduran legislation, the collective bargaining agreement (also called the Convención Colectiva) is the only instrument, and it can be used by a workers' union or by a group of temporarily associated workers (Art. 53). In this case, both instruments are one legislative entity with which the temporary coalition and the union will have the same attributions. The Law of Arreglo Directo (Art. 790) was established for instances of frustrated attempts at negotiation. When initiated by the union, a collective bargaining agreement can result, while in instances where the workers are not unionized, a direct agreement on working conditions will be reached (Art. 793).

c. Agreements reached during conflict resolution processes

Direct collective negotiations do not always result in agreements. If the workers' or union's demands are not satisfied by the employer, this can lead to a formal disagreement that can even result in external

manifestations such as strikes. The labor law therefore establishes conflict resolution mechanisms, which include procedures where a third party imposes a solution (arbitration). In any case, these involve procedures established by the State in order to prevent labor conflicts from becoming too serious.

The Honduran Labor Code permits both union and non-union collective bargaining. It also establishes the conciliation process as a stage subsequent to the phase of direct negotiation, so if an agreement is not reached through the arreglo directo, the workers or the union should turn to the conciliation process (Art. 794), where when the entity or person representing the workers reaches an agreement, it will be considered to be the collective agreement (Art. 806). The Conciliation happens before the juntas of conciliation and arbitration, which are entities created by and presided over by the administrative labor authorities and in which both workers' and employers' representatives are incorporated (Art. 648).

3. SPECIFIC CONCERNS IN THE LABOR CODE WITH REGARD TO FREEDOM OF ASSOCIATION AND THE RIGHT TO ORGANIZE AND BARGAIN CLLECTIVELY

1. Number of persons needed to constitute union

Moreover, the requirement to have more than 30 workers to constitute a trade union (Art 475) has prompted the CEACR to comment that this number "is not conducive to the formation of trade unions in small and medium-sized enterprises". In many cases, the employers divide a given company into various companies, so that none of the companies have more than thirty workers, making it impossible for the workers to legally organize.

2. Right to constitute unions without distinction

In Honduras, public sector workers cannot form unions, and their associations do not enjoy the same advantages and privileges that unions have. Additionally, even when public employees are allowed to create organizations, there are limited in terms of their activities. In Honduras, official service workers (except the police and army) can form unions, but they can only perform the activities authorized by law, which do not include collective bargaining of working conditions. Private security services workers find themselves in a similar situation of discrimination. The administrative interpretation of Article 534 of the Labor Code denies inscription of these workers' unions.

Additionally, as assembly plants in the free trade zones are considered public enterprises, workers in the maquilas are subject to the laws that apply to public sector, not private sector, workers. The Labor Code also excludes from the right to organize workers in "agricultural or stock-raising enterprises that do not regularly employ more than ten workers", which is considered by the CEACR to be contrary to Article 2 of ILO Convention No. 87, which "lays down the right for all workers to form free and independent organizations".

3. Union Registration

When a union is formed, its organizers must submit a list of founding members to the Ministry of Labor as part of the process of obtaining official recognition. However, before official recognition is granted, the Ministry of Labor must inform the company of the impending union organization. At times companies receive the list illegally from workers or from Labor Ministry inspectors willing to

take a bribe. The Ministry of Labor has not always been able to provide effective protection to labor organizers. During the year the Ministry of Labor improved its administrative procedures to reduce unethical behavior of its officials regarding union organizing.

4. Obtaining legal recognition

The creation of unions does not require previous authorization, but it is clear that the functioning of the union is subject to state recognition, and the labor law expressly establishes the need for state recognition: *"No union can act, or exercise the functions provided for by law and its statutes, or exercise the rights corresponding to it, until the recognition of its legal status, and then only as long as this is valid* " (Art. 490). In Honduras, state recognition continues being a necessary condition to the existence of the organization. In conclusion, inscription in State registries is not just a publicity requirement, but also represents State authorization for the union to function.

Honduran labor law has always stated that the administrative authorities had to resolve the question of a union's inscription application within 30 days. The first 15 days are dedicated to looking over the documentation, and the second 15 days are for the Ministry of Labor to make the resolution (Arts. 482-83). The Committee on Freedom of Association considers that the obligation to register organizations does not contradict Convention 87 when it is a simple formality, but it can violate freedom of association when the authorities use their discretion to deny registration to unions or when "an inscription procedure is long and complicated" or when "the latitude with which the administrative authorities exercise their duties represents a serious obstacle to the creation of a union". As we will see, the Honduran government has used these mechanisms to deny legal recognition to unions.

5. Union Plurality

Honduran legislation establishes that two or more unions cannot coexist within the same company, institution, or establishment. If they do both exist for some reason, the one with more affiliates will be the one that remains, and it should allow the other union's affiliates to join without making the admission requirements more burdensome (Art. 472). To be in compliance with Convention 87, this should not be understood in a way that impedes simultaneous affiliation to an enterprise level union and a national union, as resolved by the Committee on Freedom of Association. Moreover, this limitation has permitted "solidarity" associations to flourish. Organized labor criticize these associations because they do not permit strikes; have inadequate grievance procedures; are meant to displace genuine, independent trade unions; and are employer-dominated. Because of the restriction of one representative per workplace, a union cannot compete with a solidarity association if the association is the first to be established.

6. Participation of non-national workers

Honduras has a legal clause (Art. 504) that limits the percentage of non-national workers that can be affiliated to the union. It establishes that 90% of the affiliates must be Honduran workers. This is clear discrimination and prevents non-national workers from fully participating in unions, violating freedom of association rights. The Labor Code also requires that the officers of a trade union be Honduran.

7. Protection from anti-union discrimination

In Honduran labor law, protection against discrimination is established for union leaders and workers who try to create a union. In terms of union leaders (Art. 516) protection is limited to unfair dismissal. Union leaders cannot be dismissed unless a reasonable cause was demonstrated previously to a judicial authority. The protection only applies to members of the central committee, starting from the election until 6 months after completing their term.

When the employer act contrary to this protection, the law establishes a sanction equivalent to 6 months' salary of the worker. The fired union leader should go through the ordinary processes which are applicable to all workers, and summon the employer to the labor courts, demanding compliance with the contract and reintegration in his/her work, in at least equal conditions. (Art. 113). However, this penalty is not adequate protection if the reinstatement depends on the worker going through the normal processes.

In terms of workers who try to create a union, Honduran legislation establishes protection for 30 workers (Art. 517) which is the minimum number of workers required to create a union. It prohibits not only the firing of the promoters but also the unjust transfer or the worsening of work conditions if it is not approved previously by the appropriate authority. The protection starts when the employer is notified though the General Labor Directorate of the Labor Ombudsmen.

Once a union is recognized, firings and harassment of trade unionists discourages attempts to organize elsewhere. The ILO has reiterated that the government must provide for adequate protection, particularly effective and dissuasive sanctions, against acts of anti-union discrimination for trade union membership or activities and against acts of interference by employers or their organization in trade union activities.

8. The right to strike

It is universally recognized that in order for workers to defend their economic and social interests, one must have the fundamental right to strike. In Honduras, however, the labor code is particularly deficient with regard to the right to strike, and has indeed been criticized by the ILO for many years.

In general, the law requires that at least 2/3 of the workers in the enterprise support the strike, and if a union calls the strike, at least half of the workers in the enterprise must be affiliated to the union. (Art. 553). The right to strike is further restricted in the public sector. (Art 554-55). First, workers need prior authorization from the government authorization or a six-month notice period before any suspension or stoppage of work in public services, even those that do not directly or indirectly on the State. (Art. 558). Moreover, workers must submit their dispute to compulsory arbitration without the possibility of calling a strike for two years, the length the arbitration award is in force, of collective disputes in public services which are not essential. (Arts. 554.2, 554.7, 820 and 826).

There are even greater restrictions in certain industries. For example, in the petroleum production, refining, transport and distribution services, the Minister of Labor has the power to unilaterally end disputes (Art. 555.2). The exercise of the right to strike is also prohibited in export processing zones, since they are considered as a public service. Thusly, any labor dispute "shall be settled according to the procedures laid down in the Labor Code for public services, in order to avoid any interruption of

production in such enterprises which would prevent them from meeting their commitments in regard to the export of their products" (Section 23 of Decree No. 3,787 of 7 April 1987, Basic Act respecting Export Processing Zones).

The objective of the strike must be to defend the workers rights, the celebration or enforcement of the collective bargaining agreement, or to demand the revision of the collective instrument when its period of effectiveness has ended.

a) The workers or union must have exhausted all direct conciliation and mediation procedures.

b) When it has to do with public services, or with the exploitation, refining, transporting and distributing of petroleum or its derivatives destined for supplying gasoline, or when the government judges it to be related to the security, health, education, economic or social life of the people, Constitutional guarantees are restricted, and the union must seek prior authorization for a strike through a resolution from the Ministry of the Interior.

c) When it has to do with services in health establishments (hospitals and clinics); social assistance establishments; activities related to the production and supply of primary food items and affecting an entire branch of this sector; services of hygiene and cleanliness; aqueducts, electric energy, and telecommunications, and the workers or their unions do not guarantee – in all cases – the supply of basic services, to avoid a grave and immediate damage to health, safety, or public economy.

d) The employer must be given at least 6 days' notice (10 days, if it is a public service), indicating the reason for the strike. The strike must be limited to abandoning the workplace. The strike may not be declared 2 months after finalizing the conciliation stage.

e) During the strike, the minimum number of workers indicated by the Labor Inspector must continue to work to carry out the jobs whose suspension would gravely hurt the resumption of the tasks or safety or the conservation of negotiations.

Article 537 of the Labor Code bans strikes called by federations or confederations, thus limiting all strikes to the enterprise level. Additionally, Article 555(2) gives power of the Ministry of Labor to end any disputes in petroleum production, refining, transport and distribution. Section 558 requires government authorization or a six-month period of notice for any suspension or work stoppage in public services that are not essential in the strict sense. Lastly, Articles 554(2) and (7), 820 and 826 require the submission of disputes to compulsory arbitration, without the possibility of calling a strike for as long as the arbitration award is in force, up to two years.

This process is unduly burdensome and has the effect of prohibiting strikes, in the public and private sector. Indeed, the vast majority of strikes in Honduras are illegal, placing workers at risk of termination.

3. Cases of Non-Compliance in Honduras

a. The Case of Yoo Yang

In this case, the government refused to grant workers the right to establish organizations of their own choosing without previous authorization. Specifically, the government refused to grant official recognition to the Trade Union of Assembly and Allied Industries Workers of Honduras (SITRAIMASH), which was founded in July 1999 with more than 500 members employed in two factories: Yoo Yang and Kimi. The latter factory, which is now closed after having transferred its production to Guatemala, at that time already had a trade union, SITRAKIMI, which supported the establishment of an industrial level trade union. The decision to establish an industrial trade union reflected the commitment of SITRAIMASH to consolidate worker representation both inside and outside the industrial park, by enabling workers to unionize themselves without having to rely on the recognition of a new trade union in each factory.

On August 16, 1999, SITRAIMASH submitted its request for legal recognition to the Ministry of Labor. On September 9, four days after the deadline had passed for assessing the request for legal recognition, the trade union sent a representative to the Ministry of Labor to determine what decision had been reached with regard to the request. The ministry official informed her that the request contained serious defects and persuaded her to withdraw it, which violated Section 482 of the Labor Code, which provides that the request remain in the legal system until the trade union makes the relevant amendments.

On November 22, the union once again submitted its request for legal recognition. On December 6 and January 17 and 24, 2000, the union's lawyer inquired about the status of the request but was denied any information. On February 25, the union and ITGLWF wrote to the Minister of Labor, Ms. Rosa Miranda de Galo, requesting her intervention in the matter. A letter in opposition was filed by in response, and recommended that legal recognition of the trade union be refused for three reasons: a lack of documentation, discrepancies between the founding documents and the by-laws, and the fact that two trade unions could not exist at the same time at Kimi. On the same day, almost three months after the statutory deadline, the Director of Legal Services of the Ministry of Labor notified the trade union that its request had been rejected for not having followed the established legal procedure and that it was not appropriate for all of the 125,000 assembly industry workers of Honduras to be represented by the workers from two factories, given that 45 legally recognized trade unions already existed in that sector. On April 26, 2000, SITRAIMASH lodged a remedy of appeal to the Ministry of Labor, requesting that the relevant body revoke its decision.

The issue eventually went before the ILO, who found that with regard to the alleged errors of form, that if the rejection of this request is based on a few formal errors that are difficult to correct, and if the conditions for the granting of registration are tantamount to obtaining previous authorization from the public authorities for the establishment or functioning of a trade union, this would undeniably constitute an infringement of Convention No. 87.

With regard to the substantive issue, the ILO held that an enterprise can have various trade unions of different levels at the same time. Workers should be able, if they so wish, to join trade unions at the branch level as well as the enterprise level at the same time Similarly, the ILO emphasized that the free exercise of the right to establish and join unions implies the free determination of the structure and

composition of unions, and that all workers should be free to decide whether they prefer to establish, at the primary level, a works union or another form of basic organization, such as an industrial or craft union

b. The Corazon Factory

In June of 2002, workers at the Corazon factory petitioned the Labor Ministry to recognize a union at the factory. To their surprise, the Ministry of Labor informed the workers that a union already existed at the factory. The factory management had been informed of the workers' intent to form a union and submitted a list of names of workers to the Labor Ministry, registering a ghost union. When the first group of workers requested to see the notification of the factory union, the Labor Ministry could only produce a list of names *without* signatures, a requirement of for legal recognition.

Subsequently, management at Corazón illegally fired union leaders within hours after the legitimate union, SITRACOR, was formed on July 27, 2002. Reinstatement of the workers was secured by direct pressure on Corazon's owners in Korea, Yoo Yang International. After persistent protest and appeals on the part of the workers, the Labor Ministry decided to hold a special election in December amongst all factory employees to decide which of the two unions would remain in the factory. The Labor Ministry also promised to hold the election at an appropriate hour to insure that as many workers as possible would be able to participate in the vote, and to provide security and independent supervision of the election.

However, the announcement of the election initiated a fierce antiunion campaign inside the factory. Workers reported numerous incidents of verbal intimidation, firings (including the firing of the union president), and attempted bribes. Additionally, union leaders noted the increase of production quotas as a tactic to discourage and exhaust workers. Despite the anti-union campaign, the SITRACOR union won the special election vote with 223 votes out of a workforce of 409 - the company union received 58 votes. The SITRACOR union finally received its legal recognition in April 2003, nearly a year after its petition for recognition was filed.

Problems at the factory persisted. Union leaders reported the continuation of inordinately high production quotas. Attempted bribes and verbal intimidation also continue. In January 2003, a security guard assaulted a union member, Lucia Caballero, who was subsequently fired when she went to get medical assistance. After Ms. Caballero filed a complaint with the police, the security guard was detained for 24 hours, but was later released at the insistence of factory management and is still employed at the factory. On May 28, 2003 the union sent the Labor Minister a letter regarding 17 unresolved cases of reprisals against union members, some dating back to September 2002. The letter notes numerous failures on the part of labor inspectors to present cases on behalf of workers, as well as situations where the inspectors concluded their investigations without bothering to interview the workers. The conflict at Corazon factory has been marked by the lack of effort on the part of the Labor Ministry to enforce and protect workers' rights. It bears repeating that the Ministry was never able to produce the signatures for the company union, and has never been able to justify why the company union was recognized in the first place.

c. *La Mesa Plantation*

On March 1, 2001, management at the La Mesa banana plantation fired 19 workers after they refused to work overtime. These firings were part of a protracted labor conflict on the La Mesa plantation, where workers had long complained about poor working conditions, forced overtime, and hazardous fumigation practices. As a result of the firings, 58 employees of the plantation formed a union. On March 24, the Ministry of Labor granted the union legal recognition. In response, the plantation management initiated a rigorous anti-union campaign, including bribes, verbal intimidation, and firings. Three members of the union's executive committee were dismissed - Maria Pedrina Gomez, Wilmar Garcia, and Aroque Garcia. All three workers were fired despite stipulations in the Labor Code of Honduras that protect the job status of executive committee members. In the case of Ms. Pedrina Gomez the union petitioned for and received a reinstatement order that has never been enforced. Both Wilmar and Aroque Gomez accepted settlements from plant management.

Over the course of the labor conflict more than 60 permanent workers were fired or resigned and then re-contracted by La Mesa plantation as temporary employees, continuing to do the same work as before. These changes in job status are perhaps the most effective anti-union tool. According to the Labor Code, only permanent employees can join a union.

In June 2001, the plantation legally redefined itself as three separate entities. The union claims the separation was a tactic to undercut its organization. This maneuver had the immediate effect of forcing the union to conduct collective bargaining negotiates with three employers, instead of one. Moreover, the division chills any future organizing efforts given the Labor Code requirement that a union consist of a minimum of 30 workers before it can be legally recognized. With 85 plantation employees spread among three companies, workers will be severally handicapped their efforts to affiliate the necessary minimum requirements. The effect of this anti-union campaign has been to reduce the number of union members at La Mesa from 58 to 22. The union has appealed the Labor Ministry on numerous occasions to investigate and monitor conditions and complaints on the plantation. The response has been inadequate. For example, labor inspectors who arrived at the plantation to investigate the March 1 firing of 19 workers ruled in favor of management without having interviewed a single one of the fired employees, choosing instead to draw conclusions solely on the word of the plantation management. In addition, labor inspectors have not resolved a number of pending complaints including the coverage of sick days and the failure of the plantation to respect government-ordered pay increases.

The violations of workers' rights at La Mesa persist despite a written "framework agreement" between Chiquita Brands International, the International Union of Food and Allied Workers (IUF), and the Latin American Coordinator of Banana Unions (COLSIBA) to respect worker rights and working conditions on plantations that for Chiquita. While Chiquita is not the owner of La Mesa, it is the sole buyer of bananas, and therefore exercises considerable influence over the policies and practices on the ground. In response to the conflict at La Mesa, Chiquita and its subsidiary, Tela Railroad Company, convened a commission that met various times with representatives of the IUF and the Latin American Confederation of Banana Workers' Unions (COLSIBA). The commission was unable to find an adequate solution to the problem. Chiquita told union representatives that its only recourse would be to completely sever relations with La Mesa's owners, thus closing the plantation and leaving all workers without jobs. The workers' representatives decline to pursue this option.

V. CHILD LABOR IN HONDURAS

A. The Legal Framework

The Constitution of the Republic of Honduras prohibits the employment of children under the age of 16, except in cases when their labor is indispensable to the family's well being and does not interfere with schooling. See Article 128 (7). The Ministry of Labor may grant permission along with parental consent to allow minors to work.

Children under the age of 16 are prohibited from engaging in night work. They cannot work for more than 6 hours per day or a maximum of 30 hours per week. Constitution 128.7 and Labor Code Art 32. The Honduran Children's Code prohibits a child 14 years of age or younger from working even with parental permission and employers hiring 15-year-old children must certify that they have completed or are in the process of completing their required years of schooling. Individuals who allow children to work illegally are subject to prison sentences, ranging from three to five years. However, this law is not enforced in practice.

The Ministry of Labor and Social Security's Labor Inspections Division is responsible for investigating child labor violations. Currently, the Ministry has less than 30 inspectors nationwide and few vehicles for enforcement related travel. Labor inspectors are often denied access to businesses and industrial parks when trying to conduct labor inspections. Given the shortage in inspectors, the Ministry of Labor has not enforced child labor laws effectively. Violations of the Labor Code occur frequently in rural areas and in small companies. Significant child labor problems exist in family farming, agricultural export (including the melon, coffee and sugarcane industries), and small-scale services and commerce. A May 2001 household survey reported that 9.2 % of children between ages 5-15 were working, and that 26 % of children ages 11-15 also work. Many children also work in the construction industry, on family farms, as street vendors, or in small workshops to supplement the family income. Boys between the ages of 13 and 18 work on lobster boats, where they dive illegally with little safety or health protection. Children who work on melon farms were exposed to pesticides and long hours.

B. The Reality in Honduras

Honduras has one of the highest levels of child labor. The Human Development Report from 2000 shows that our country, in comparison with the other Latin American countries, has the highest percentage of children incorporated into the workforce. Nearly 70% of the child PEA is in agriculture and commerce (for boys) and domestic service (girls). About 261,000 adolescents work in Honduras. Of these, about 66% live in rural areas and the rest are located in urban areas (27,272 in the Central District, 19,890 in San Pedro Sula and 48,981 in small and medium sized cities). According to the Encuesta Permanente de Hogares de Propósitos Múltiples, (EPHM) in 1999 the child PEA for 10-14 year olds was approximately 6% of the total, and the child PEA for 15-18 year olds was 15% of the total, which means that there were 139,330 boys and girls and 344,975 adolescents working or looking for work. According to the same source, in the last decade the child PEA grew 12.5% and juvenile grew 44.3%. The proportion of female PEA that were girls increased from 12.5 to 13.5%.

Different studies have shown that there are four economic activities that are most commonly pursued by children in Honduras, including: a*griculture, commerce, industrial manufacturing* (this includes the

food industry, beverages, tobacco, candy, petroleum refineries and the production of non metallic minerals for the construction industry) and the *domestic service area.*[2] About half of working children are working in agriculture, cattle, forestry, fishing (49%) and represent 6.5% of the agricultural labor force in Honduras. One fifth of the children (18%) work in manufacturing, mines, electricity, gas, water, construction and constitute 3.5% of the economically active population in this sector. Finally, about a third of child laborers (32%) work in commerce, transportation, finances, services and represent 3.5% of the EPA of this sector.

Children working primarily in agriculture tend to work long hours and may be subjected to high temperatures or contact with toxic substances like pesticides or insecticides, which are used to fumigate crops, or may inhale smoke from the fires that farmers use to burn forests in order to prepare fields for planting. In times of planting and harvest, many children do not have the option to attend school. Children working in mines similarly have precarious work and often are without protection from the toxic gases in the mines. The children who work in the informal sector, as street vendors, are also exposed to car traffic and to delinquents who attack.

ACTIVITY	**NATIONAL**		**RURAL**		**D.C**		**SAN PEDRO SULA**		**MEDIUM AND SMALL CITIES**	
Absolute figures	**Boys**	**Girls**	**Boys**	**Girls**	**Boys**	**Girls**	**Boys**	**Girls**	**Boys**	**Girls**
	68482	29363	51524	18230	6549	2719	1577	1616	8832	6888
Agriculture	64.0	14.0	81.0	23.0	0.00	0.00	0.00	0.00	29.0	0.00
Mines	0.4	0.00	0.5	0.00	0.00	0.00	0.00	0.00	0.0	0.00
Mfng.	10.0	26.0	6.0	25.0	27.0	30.0	29.0	22.0	21.0	28.0
Construction	3.0	0.00	1.5	0.00	14.0	0.00	4.0	0.00	4.0	0.00
Commerce	13.0	40.0	8.0	38.0	39.0	28.8	28.0	51.0	24.0	50.0
Transport	1.0	0.00	0.5	0.00	0.00	0.00	20.0	0.00	2.0	0.00
Services	7.0	19.0	3.0	14.0	20.0	42.0	19.0	28.0	20.0	22.0

Source: 1998 Census. From the document "Serie Niñez y Juventud. El trabajo Infantil en Honduras". IHNFA, UNICEF, and the Secretary of Labor and Social Security.

According to the ILO's most recent investigation in Honduras, the types of child labor that fit the definition of worst forms of child labor as defined in Convention 182 include: domestic service; the sex trade; illegal activities (drug trafficking, stealing cars); dangerous or immoral work (fireworks

[2] Serie Niñez y Juventud. No. 1. El Trabajo Infantil en Honduras. Honduras, March 1999. IHNFA.

production, collecting trash, selling chemicals for agriculture, manufacturing chemicals for agriculture, working in bars, working in sawmills, working in woodcutting with power saws, mining); melon plantations; diving; and begging.[3]

The economically active population, EAP, represents 53.1% of the population that is of the legal working age with a gender participation level of 71.5 for men and 36.3 for women.[4] The increase of almost 10 percentage points in the female EAP in this decade shows its significant growth, especially in the urban areas (44.5%) and particularly in San Pedro Sula (45.1%) and the Distrito Central (47.9%). 54.5% of the total EAP is self-employed in low income jobs. 51% receive incomes below minimum wage.

Spotlight: Domestic Servants

Domestic service includes work as butlers, cooks, cleaners, washers, nannies, gardeners, drivers, and housekeepers. Salaried domestic work incorporates 15.3% of child EAP (10-18 year olds). The total of both sexes in domestic work 76,023 (38%) of the EAP is occupied by persons younger than 18 years old. Ninety-four percent of the children working in this occupation are girls and 96% of people of all ages who perform domestic work are women. Children between the ages of 12 - 14 working as domestic servants have an average education level of 4.5 years. Those between the ages of 15 - 18 have an average of 5.1 years of education, meaning that they have missed nearly 7 years of school.

Children working in this sector have the lowest salaries in comparison with all other categories of salaried work in the public, private, and self-employed sectors. The average minimum wage according to the most recent census is 1,501.34 lempiras (US$93.80). Children between the ages of 12-14 who do domestic work receive about 28.6% of this minimum wage, and 14-18 year olds receive 44.4% of this minimum. According to census data, the average income in lempiras of children doing domestic work is 429 lempiras (US$26.8) monthly for 12-14 year olds and 668 lempiras ($41.70) monthly for 15-18 year olds.

Child EAP by gender, 10-17 years, doing domestic work in other people's homes

TOTAL	BOYS	%	GIRLS	%
20,764	1,189	5.7%	19,575	94.3

Source: Encuesta de Hogares de Propósitos Múltiples, EPHM. March 1999.

The national legal context is not adequate or clear with respect to domestic work. That is why, in practice, those workers work longer hours and earn lower salaries. Many live in the homes of their employers and must submit to the authority of all of the family members.

[3] Investigation on "Trabajo infantil domestico en Honduras" as part of the International Program to Erradicate Child Labor (IPEC), HONDURAS 2003

[4] Encuesta de Hogares de Propósitos Múltiples, EHPM, Dirección General de Estadísticas y Censo, September 2001, Honduras.

Number of hours worked per day by child laborers, organized by age group

Hours	10-13	14-15	16-17	TOTAL
Fewer than 8.	36.8	17.9	14.9	18.4
8	13.2	10.4	8.9	10.0
9 to 10 hrs.	23.7	23.9	17.9	20.5
11 to 12 hrs.	15.8	31.3	32.1	29.3
More than 12 hrs.	10.5	15.0	24.0	19.3
Ns/ Nr		1.5	2.2	2.5
Total	100.0	100.0	100.0	100.0

Source: Study "Trabajo Infantil Doméstico en Honduras". 2003.

With domestic work, it is often not clear what a worker's responsibilities are. In many cases, children end up doing more than they agreed to do because the agreements are generally oral and the employers are not always honest about the conditions and responsibilities. Indeed, to convince someone to take the job, the employer will promises, for example, that the child may continue with his or her studies.

Spotlight: Maquilas

The maquiladora industry has found favorable operating conditions in Honduras, where there is a high level of unemployment. Children with unmet needs go into the workforce at an early age. Most of which enter the workforce in the informal sector, but are applying for jobs in services, construction, and maquiladoras in increasing numbers. The Secretary of Labor and Social Security has concentrated its attention on 14-18 year olds working in this sector, raising awareness about the working conditions that these children confront in order to propose the necessary measures to improve such conditions

Many factors make it difficult for poor children to go to school. Many have to substitute work for school in order to survive. This situation limits the child's primary education and then makes it difficult for them to access the second level of education.

Gender, age group	Level of education----------				
	PI	PC	SI	SC	TOTAL
Boys					
14-15	-	-	-	-	
16-17	18	1	-	0	19
Girls					
14-15	1	-	-	-	1
16-17	64	51	1	1	117

Source: Secretary of Labor and Social Security.

Maquila business owners do not demand a certain level of education when they assign their workers to particular activities or tasks. This situation limits the aspirations and opportunities of the children. As a result, the children remain at a low level of education that does not let them choose better jobs and a better standard of living.

Conclusion

In general, with respect to child labor, it can be said that children who work in domestic chores, agriculture, and maquilas are incorporated into the workforce with irregular conditions, even before they have reached the age when they can legally work. The labor relations that the managers establish are generally informal, exploitative, and systematically violate workers' rights. Contracts are generally verbal and imprecise, so that their terms can be easily changed at the whim of the employer.

VI. THE RIGHTS OF WOMEN AND CONDITIONS OF WORK IN THE MAQUILAS

A. Status of Women in Honduras

Female participation in the economy increased from 11.9% in 1961 to 28.7% in 1993. However, poverty has been increasing since 1990, with the most vulnerable groups being women, children, and the elderly. Homes considered below the poverty line (unable to supply basic necessities) = 71%. This situation is worse in rural areas where 79% of homes are below the poverty line.

The educational situation of Hondurans varies greatly depending on socio-economic level and location of residence. Since the end of the 70s, literacy has risen slowly among poor women. The incorporation of urban and non-poor women into middle and high levels of education has been rapid. Rural women's problems with access to formal education have been difficult to overcome. The high level of illiteracy, low retention in school, low number of people with high levels of training, are some of the problems that limit the educational development of rural women. Doing a comparison of census data from 1974 and 1988 we can see that illiteracy has decreased, because in 1974 49.8% of rural women were illiterate and in 1988 it was 43%. This shows that in the past several years there has been some progress in rural education, but illiteracy still persists.

In terms of economic rights, there has been a large and irreversible jump in female PEA, especially in commerce and industry, even though women still receive less pay for equal work. One of the main problems is inequality in pay; women have access to a proportion of 24.2. In terms of health, maternal mortality has dropped from 0.26 to 0.14 over 1000 in the 1990s. Women continue to have problems and to die from hemorrhages, infections, and abortions, and AIDS (this has quintupled in the past several years, from 5\100,000 to 25\100,000).

B. Labor Conditions of Women

Different studies, investigations, consultations, and constant international and national complaints have shown that women workers in the maquilas suffer many different human rights violations; however, the most frequent are failure to pay salaries and bonuses, particularly in maquilas that close their operations in the country. In those that still function there are also many human rights violations.

- **Presence of the maquila in Honduras**

Since the 1960s, the maquila has been given a lot of attention as the new form of multinational company. The international division of labor, as manifested in the maquila model, was created by a series of economic and technological conditions in advanced capitalist countries, including: changes that facilitated the development of a cheaper and faster transportation system, the simplification and scientific management of work processes, which fragmented production into relatively simple stages, each of which could be done fairly independently.

The maquiladora industry is one of the most notable economic advances in recent years, and there are more industrial processing zones. Women's participation in the work force in these areas has increased, although it is important to note that they also use male labor.

The work opportunities that this industry offers have created a marked migration to the zones where these industries operate. This creates social problems and challenges for public services that must try to work with a rapidly expanding population.

The maquilas operate in regions with high levels of poverty, cheap labor costs, massive unemployment and sub employment, little control on the degradation of natural resources and environmental contamination, and in countries where the governments are willing to support that type of investment by eliminating tariffs and other obstacles that would impede the exploitation of cheap labor.

- **The expansion of the maquila in Honduras**

In our country, the expansion of the maquila industry is a relatively recent phenomenon. In 1978 they created the first free zones in the north of the country, but it didn't grow rapidly until the end of the 1980s (1987) when the industrial processing zones were created.

The maquila industry has had important growth in Honduras, especially in the 1990s, which was considered the most dynamic time in terms of productivity and generating jobs (under the conditions explained earlier), with primarily female labor, although an increasing number of men have also begun to work in the industry, especially in non-textile activities like wood, automobiles, and electronics. In terms of commercial activity, the industry has the following tendencies: 11.3% are dedicated to commerce, 13.7% are varied industries, 6.6 % provide services for other companies, and 68% are dedicated to textiles, as shown in the following graphs:

- **Personnel involved in maquilas, by gender:**

YEARS	FEMALE	MALE	TOTAL
1995	37,736	17,259	54,995
1996	46,804	19,146	65,950
1997	59,639	23,825	83,469
1998	72,523	26,382	98,905
1999	73,035	30,236	103,271
2000 (PRELIMINAR)	67,677	38,853	106,530

Source: Banco Central de Honduras

Concept	1990	1991	1992	1993	1994	1995	1996	1997		1999	May 2000
Exports	113.0	196.0	365.0	506.0	646.0	921.1	1219.5	1659.0	1855.1	2158.3	907.7
Dozens exported	3.5	6.6	10.5	13.7	19.9	32.1	52.3	79.4	82.5	99.0	44.4
Aggregate Nat'l Value	45.1	54.1	66.9	98.6	125.9	195.9	282.1	390.1	455.2	541.1	-
Nat'l Invest.	66.6	111.1	133.3	155.5	200.0	288.6	333.0	399.6	512.5	526.3	-
Int'l Invest.	704	101.7	139.1	284.5	356.3	386.7	416.2	515.0	536.1	565.5	-
Indust. Parks	3	5	6	7	9	13	15	16	19	21	24
No. of Co.	35	49	67	147	175	182	192	200	207	216	218
No. Employed	17500	24500	33500	42000	50000	65000	764230	870000	1109230	1207030	1233220
Direct Dependent	70000	122500	167500	210000	250000	325000	382115	435000	554615	603515	616610
Indirectly Employed	14000	19600	268000	420000	500000	65000	764230	870000	1109.230	1207.030	1233.220
Salaries	18.2	31.8	43.6	54.6	100.0	136.5	160.5	194.9	271.3	305.3	-
Exchange to $	5.3	5.4	5.62	6.57	8.51	9.47	11.84	13.14	13.54	14.35	14.83

Economic growth in maquilas, 1990-2000, In millions of dollars
Source: "La Maquila y su incidencia en la Economía Nacional". Secretary of Industry and Commerce.

C. Some Concerns

Below are some of the major concerns with regard to decent conditions of work. Also attached to this report is a recent investigation undertaken by EMIH (Honduran Independent Monitoring Team) regarding the conditions of work in the maquilas producing for Canadian apparel manufacturer, Gilden.

1. Plant Closures

In December 2001, the NGO, Centro de Derechos de Mujeres (CDM) , undertook a study on the effects of mass lay-offs in the maquila sector. The following summarizes three case studies and the findings of CDM.

a. Interfashion

This company operated for over 15 years in Choloma in the free zone of ELCATEX, producing goods for Levis. Interfashion belonged to a group of maquilas owned by Roberto Lieva, who had closed several other operations in this group and thus leaving over 2,800 persons without work. Interfashion was the company in this group with the most workers, about 1,000, of which 80% were women. It was also the only factory to have a union, with over 800 members.

Interfashion withheld the "14th month" pay from the workers, arguing that financial problems required paying the wages at a later date. When the wages were not paid by the promised date, the workers declared themselves indirectly dismissed allowing them to demand their wages in the manner set forth in the Code. Confronting this situation, the company opted to close on July 2001.

Workers had also informed CDM that the company had a history of violations, including failure to make social security payments, maternity leave, a study bonus established under the contract, and wages and benefits owed to workers unjustly terminated. Additionally, the workers had organized a savings cooperative administered by the accounting department of the company. At the date of the closure, the workers had amassed 8000,000 lempiras; however, the money was not returned by rather the workers were told that the owner had already used it.

As a result of the complaint filed by the workers, an embargo of the goods was ordered. However, the bank had already demanded payment. The workers and the banks came to an agreement by which the workers would receive payments, but the agreement was never fulfilled.

b. Sunny Industries

This Korean maquila, was also located in Choloma. There, the workers formed a union, SITRASUNNY, and affiliated themselves with the CGT in response to labor conflicts. These included the termination of 35 underage child workers who were fired for having borrowed papers to work. Additionally, there were claims for wages, overtime and maternity leave that were not permitted by the company. Following a strike by the workers in October, the company promised to make payments to the workers before initiating the suspension of their contracts. In November 2001, the company suspended the contracts of 720 employees for a period of 120 days. However, the company closed operations before legally permitted to do so, and without paying the wages and benefits owed. Also, as

above, the company had organized a savings cooperative which contained 200,000 lempiras. However, the company had used the workers funds to pay costs, leaving nothing for the now unemployed workers.

c. Intertex Apparel manufacturing IAMSA

The Intertex maquila, also located in Choloma, was owned by investors from Singapore. This maquila had 635 workers. After the company suspended the contracts for 120 days in August of 2001, the union, SITRAIAMSA, demonstrated its opposition to the suspension of contracts with the Secretary of Labor. Of particular concern were 34 pregnant women who were left without access to medical care.

In November, the union was presented with a bill of sale for the machinery by Henry Chiu, the legal representative of the company and legal representative of a new company, Tri State. As such, he removed most of the newer machinery from the factory.

In December, two days before the date by which they had to return to work, the company announced through a note that it had closed the operations. A meeting was held between the union, the legal representative of the company, a representative of the ministry of labor and a representative of the Maquila Owners Association of Honduras. The parties reached an agreement that the workers would be paid from the proceeds of the sale of machinery still left in the factory. This cause concern among the workers, as there was no guarantee that the company would comply with the agreement. Moreover, if the owners left the country, there would be no way to obtain a legal remedy. Moreover, the value of the machinery left in the factory, mostly old and worn, would not bring much at sale and would therefore not cover the salaries of the workers.

Summary

In each of these companies, the conditions of work prior to the plant closures were not dignified. Workers were routinely mistreated when they failed to meet quotas. Also, they were subject to yelling, pushing and the denial of the right to use the bathroom or to see a doctor. Occasionally, workers would be suspended for 8 days or more without pay for minor infractions, whether real or mere perceived. At the time of the report, only 20% of the terminated workers found employment, meaning that the vast majority were left to the kindness of families to get by while their cases against the companies proceeded.

2. Harassment and Abuse

In maquiladoras, the relationship between workers and bosses is usually tense. Workers are constantly monitored by the Honduran security guards in the entrance gates and in the industrial park. These guards register their entrances and exits and take advantage of these opportunities to be mistreat the workers. Many times, Korean factory supervisors shout and constantly insult the workforce. In other companies, the workers are punished physically, which is not happening so much now because of awareness campaigns and support from a union federation. Moreover, supervisory personnel in some Korean companies do not speak Spanish and, when work-related conflicts arise the parties are unable to effectively communicate. The labor code does not have treat sexual harassment.

3. Dismissals due to Pregnancy

Under the Labor Code, women workers have the right to not be fired due to pregnancy; this right is not complied with in many maquiladora companies. There are many cases where the employer only suspected that women workers were pregnant, and they were fired.

Maternity leave is one of the most discussed and regulated labor rights for women, and one of the most common causes for conflict between bosses and maquiladora workers. Article 128 of the Labor Code recognizes a woman's right to a rest period before and after giving birth, without losing her job or her salary. There is also a recognized nursing period. Article 135 of the Labor Code establishes that all pregnant women workers will enjoy an obligatory paid rest period and will keep their jobs and all rights set out in their labor contracts. Additionally, under Article 142 of the Social Security Law, if the woman is unable to work due to her pregnancy she is therefore entitled to economic support. Each workers is also entitled to a subsidy equal to 100% of their salary. The Social Security pays 66% and the employer pays 34%. The maternity subsidy is for 6 weeks before and after the birth.

4. Working Hours

Article 128 of the Labor Code provides that the normal working day shall not exceed 8 hours a day, or 44 hours in a week. Night shifts should not exceed 6 hours a day or 36 hours a week. In any case, no worker is obliged to work more than 12 hours in each 24 hour period. On average, the working day is 9 hours (7:30 a.m. a 4:30 p.m), although in some companies, workers have had to work from 7:20 am to midnight. Some factories have failed to compensate the workers for these overtime hours. Moreover, there have been reports that if the workers are not in their places at 7:25 am exactly, they can't enter the factory and lose their salary for the day.

The Labor Code also excludes domestic servants (almost all of whom are women) from days of rest or holidays. They are given an absolute rest period of 10 hours; of these, at least 8 are night hours and continuous, and 2 are for meals. The law also provides the right to one paid rest day for every six workdays.

VII. CONCLUSION

As the data clearly demonstrates, Honduras continues to violate internationally recognized labor rights, both in law and in practice. While the Memorandum of Understanding of 1995 has had some effect, there is much room for improvement. In the context of trade with Honduras, the U.S. government should make enforcement of labor rights an issue, particularly in light of previous unfulfilled commitments made by the Honduran government.